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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Numbering Resource Optimization

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CC Docket No. 99-200

To: The Commission

**VERIZON WIRELESS REPLY COMMENTS
IN RESPONSE TO FURTHER NOTICE**

VERIZON WIRELESS

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SUMMARY

The comments demonstrate that there is broad agreement on many of the issues concerning the utilization threshold, implementation period for CMRS pooling, and sale of numbers.

Utilization Threshold — Safety Valve. The comments uniformly reflect a serious concern that a safety valve mechanism of some kind is needed and that strict reliance on a utilization threshold alone to determine eligibility for growth codes is unwise. None of the commenters supported reliance solely on a utilization threshold. Instead, the broad consensus of commenters — including users, state regulators, and carriers — was that if the Commission wishes to rely on a utilization threshold, it must be reasonable for typical circumstances and also include a means for demonstrating *bona fide* need by alternate means. Verizon Wireless agrees with commenters who urge the Commission to allow carriers to make any such showings directly to NANPA in their code requests, rather than pursuing a separate waiver or appeal process before a state commission or the FCC, given the time sensitivity of such requests.

Utilization Threshold — Applicable at Rate Center. The commenters addressing the level at which the threshold should apply agreed that the *only* level at which utilization thresholds have any relevance to issuance of growth codes is the rate center (or a particular switch within a rate center) within an NPA.

Utilization Threshold — Ranges/State Discretion. Most commenters supported a uniform nationally-established utilization threshold, including some states. Only a few states supported the alternative proposal for establishing a range of thresholds, from which state regulators might select according to their discretion. However, there is no record basis for adopting a range of thresholds, and none of the states suggesting specific ranges provided any factual basis for their recommendations.

Equally important, there is no legal basis on which to grant the states the discretion to vary the utilization threshold. There are no standards proposed, so the states would thus have unbridled discretion. The Commission cannot grant such authority. Moreover, it is essential that wireless service in particular be subject to uniform national standards, because it is organized and provided on an interstate basis. Access to growth codes should be governed by consistent national policies, not by policies varying from state to state. Giving states the authority to determine the utilization level needed by an interstate company to obtain numbers for serving customers would lead to unpredictable results and place burdens on interstate commerce.

Utilization Threshold — Changes to the Formula. The Commission's new formula for determining a carrier's "utilization" rate no longer determines how productively a carrier's numbering resources are utilized, because the new formula takes into account only numbers assigned to the carrier's end-user customers and excludes numbers used for legitimate and necessary purposes that would have been included under the traditional formula, namely, aging, administrative, reserved, and intermediate numbers. There is *no* support in the comments for the Commission's new method of calculating utilization. All of the commenters who addressed the issue agreed that by omitting essential categories of numbers *that are not available for*

assignment by the carrier, the Commission's formula significantly understates the percentage of numbers that *are* being utilized and therefore unavailable for assignment by the carrier, including intermediate, aging, administrative, and reserved numbers. The formula needs to be revised to take these into account if the formula is to be used for determining a carrier's eligibility for codes.

The change in the formula is particularly significant because some states advocated particular utilization thresholds based on the old formula, not the new one. Given that there is at least a 10-15% difference between the two, the states' suggestions would have be lowered considerably for consideration under the new formula.

Moreover, the new formula penalizes categories of carriers with a substantial number of numbers in the excluded categories, because they would face impairment in obtaining growth codes. Given that numbers must be placed in these categories in order to provide service to subscribers and that carriers cannot assign the numbers from these categories to their own subscribers, these categories should not be counted against a carrier as though they were simply vacant numbers. Indeed, many of the numbers in these categories are there to comply with governmental policies that apply to specific types of carriers, such as CMRS roaming, resale, and E911 service.

CMRS Pooling Transition. There was considerable support for a CMRS transition period of six to twelve months or more. Commenters showed that there is a need for adequate testing of LNP before adding pooling, particularly in light of the need to modify systems network-wide, develop intercarrier communications networks, and deploy operational support systems. In addition, implementing LNP and number pooling at the same time would be highly disruptive, because it would divert resources away from LNP implementation and making both programs harder to troubleshoot. Doing both LNP and pooling in November 2002 poses a risk of disruption of service to customers that is both unnecessary and avoidable, particularly with respect to nationwide seamless roaming. Roaming is complex, and the introduction of number portability makes it even more complex, because a given number may have been ported or reassigned. Adding to this the complexity of dealing with pooled numbers *at the same time* virtually insures that incorrect or delayed bills for roaming service will result. Wireline carriers have not been required to accomplish LNP and pooling at the same time, but instead rolled out LNP in stages, followed by pooling. For wireless carriers, implementing pooling at the same time as LNP will be a more accelerated and complex task that was the case for wireline carriers.

Several states cited statistics to support the alleged benefits of rapid implementation of CMRS pooling. A close examination of the facts and figures, however, demonstrates that the states' arguments are incorrect. Indeed, the states' facts actually call into question whether there would be any benefit at all from rapid implementation of CMRS pooling.

Sale of Numbers. The commenters broadly agreed that the sale of numbers would be misguided and unlawful. Even if it were lawful and a good idea, which it is not, there are huge practical issues that would need to be resolved. Accordingly, the Commission should reject this proposal.

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In the Matter of)
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Numbering Resource Optimization) CC Docket No. 99-200
)
To: The Commission

Verizon Wireless hereby replies to the comments submitted in response to the Commission's March 31, 2000 *Further Notice of Proposed Rulemaking*.¹

A. A Safety Valve Is Necessary

If a single utilization rate is to be applied without exception, the rate *needs to be low enough to satisfy every reasonable circumstance in which carriers would legitimately need numbering resources.*²

¹ *Numbering Resource Optimization*, CC Docket 99-200, *Report and Order and Notice of Proposed Rulemaking*, FCC 00-104 (Mar. 31, 2000) (*Further Notice*).

view that if the Commission decides to establish a utilization threshold, the threshold selected must be reasonable for typical circumstances and make provision for alternate showings when carriers have a legitimate need for codes despite being below the prescribed threshold. A broad consensus of commenters — including users, state regulators, and carriers — urged the Commission to include some form of “safety valve,” alternate showing, appeal/waiver process, or other flexibility provision in its utilization threshold.

Telecommunications users expressed concern that strict reliance on utilization might prevent some carriers from meeting customer needs.³ For example, one user group emphasized that “the rules should include an exemption that allows the threshold to be overridden if a carrier has a *bona fide* request for a large block of consecutive numbers,” which may be “necessary for efficient configuration and operation of PBX equipment arranged for direct inward dialing.”⁴ Likewise, states showed support for a flexible approach. California, for example, advocated allowing a carrier to get a growth code if it can document that it is within 3 months of exhaust, and New Hampshire would create an “imminent exhaust” exception for carriers within 6 months of exhaust.⁵ New York takes the position that a utilization threshold alone cannot account for spikes in demand, and urges evaluation of utilization rate together with months to exhaust (“MTE”) and other evidence of *bona fide* need, and Maine takes a similar position.⁶

(footnote continued)

² Comments of SBC Corporation at 10 (emphasis added).

³ See Comments of Ad Hoc Telecommunications Users Committee (“Ad Hoc”) at 5; Comments of Joint State Consumer Advocates (“State Advocates”) at 11; General Services Administration (“GSA”) at 3-6.

⁴ Comments of Ad Hoc at 5.

⁵ Further Comments of the California Public Utilities Commission and of the People of the State of California (“California”) at 5; Comments of the New Hampshire Public Utilities Commission (“New Hampshire”) at 6.

⁶ See Comments of the New York State Department of Public Service (“New York”) at 2; Comments of the Maine Public Utilities Commission (“Maine”) at 3-4.

Carriers and their trade associations uniformly saw a need for alternatives to strict thresholds. Like Verizon Wireless, the other carriers urged the Commission to allow issuance of growth codes if a carrier can show a legitimate, *bona fide* need based on a variety of circumstances. CTIA cited factors such as a “lumpy” sales cycles, seasonal growth spurts, or short-term marketing strategies.⁷ GTE urged the Commission to allow a carrier to justify growth codes based on a demand showing, the projected growth rate of number utilization, and a capacity showing.⁸ Winstar said a carrier should be able to show need in numerous ways, such as customer requests, an increase in demand, the rollout of new services or products, or equipment limitations.⁹ BellSouth cited promotions and geographic expansions as examples of “*bona fide* need” justifying making codes available despite the threshold.¹⁰ CompTel cited high growth areas, a large end user, introduction of a new service, successful marketing campaign, or extension of service to a new subdivision or office park.¹¹ Several carriers suggested MTE levels ranging from 3 to 6 months that should entitle a carrier to growth codes.¹²

Factors such as these clearly justify assignment of codes because the carrier is able to show a *bona fide* need, yet no objective utilization formula can readily be designed to take all such factors into account without being so low as to be pointless. For that reason, Verizon

⁷ See Comments of the Cellular Telecommunications Industry Association (“CTIA”) at 11-12.

⁸ See Comments of GTE Service Corporation (“GTE”) at 6-9.

⁹ See Comments of Winstar Communications, Inc. (“Winstar”) at 4-5.

¹⁰ See Comments of BellSouth Corporation (“BellSouth”) at 6-7.

¹¹ See Comments of the Competitive Telecommunications Association (“CompTel”) at 3.

¹² See Comments of the United States Telecommunications Association (“USTA”) at 3, Personal Communications Industry Association (“PCIA”) at 3-6, AT&T Corp. (“AT&T”) at 5-6, MediaOne Group, Inc. (“MediaOne”) at 6, VoiceStream Wireless Corporation (“VoiceStream”) at 10-11, Letter Comments of U S WEST, Inc. (“USW”), filed May 19, 2000, at 4-5 (all suggesting 6 months); Comments of Cox Communications, Inc. (“Cox”) at 4, Sprint Corporation (“Sprint”) at 4 (both suggesting 3 months).

Wireless urges the Commission that if it adopts a utilization threshold, that threshold should ensure that carriers can timely obtain needed codes in *typical* cases,¹³ but it must also make provision for a “safety valve” that would allow carriers who do not meet the threshold to present NANPA with any and all relevant evidence of *bona fide* need.¹⁴ For example, in many cases, evidence such as a customer order, proof of a new service or marketing campaign, or MTE worksheet should suffice.¹⁵ Similarly, this flexible approach would allow carriers to justify growth codes where numbers in existing codes cannot be used for valid technical, business, or policy reasons, such as phasing out Type 1 interconnection, reverse toll-billing arrangements, or frozen post-split grandfathered numbers, if such codes are not given separate treatment.¹⁶ This would ensure that there is a “safety net” under the threshold that would “ensure carriers’ ability to obtain numbers in a timely fashion”; without such a provision, “a utilization threshold will likely cause some carriers to run out of numbers altogether, thus frustrating their growth and limiting consumer choice.”¹⁷

In view of the time sensitivity of a “safety net” showing, Verizon Wireless agrees with several commenters that the requesting carrier should make this showing directly to NANPA in its code request, rather than pursuing a separate waiver or appeal process.¹⁸ NANPA, in turn, should have authority to grant requests based on a *bona fide* showing of need. There is no reason to require application to a state commission or the FCC on a time-sensitive matter such as this.

¹³ For example, many commenters urged the Commission to set the threshold to ensure a six-month inventory of numbers under typical conditions. *See, e.g.*, Letter Comments of USW at 4; Comments of Bell Atlantic at 8; USTA at 2-3.

¹⁴ *See, e.g.*, Comments of PCIA at 3-6.

¹⁵ *See* Comments of CompTel at 4.

¹⁶ *See* Comments of Verizon Wireless at 16-18.

¹⁷ Comments of MediaOne Group, Inc. at 3, 7.

¹⁸ *See, e.g.*, Comments of CTIA at 11; GTE at 3-4; Sprint at 4.

Moreover, there should be uniformity in how the safety valve functions.¹⁹ The Commission should not allow states to second-guess the established procedure by adopting their own so-called “safety valves” that result in inconsistent and unpredictable access to growth codes.

B. Utilization Thresholds Should Apply Nationwide, but Only at the Rate Center Level or Lower, Not NPAs or Carrier-Wide

The comments reflected the unanimous view that the *only* level at which utilization thresholds have any relevance is whether a growth code should be assigned to a carrier at a particular rate center (or a particular switch within a rate center²⁰) within an NPA.²¹ There was no support for generally applying utilization thresholds at the NPA level. A carrier typically needs numbering resources at a specific rate center or switch, and its need is not affected by its utilization across the entire NPA. It should be assigned a growth code if its utilization threshold *at that rate center* justifies it, regardless of its utilization rate NPA-wide or in other rate centers.²² Applying an NPA-wide utilization threshold would penalize consumers in rate centers where carriers have high utilization, a result which the State Advocates rightly describe as

¹⁹ See Comments of Worldcom, Inc. (“Worldcom”) at 3; GTE at 3-4; Sprint at 3-4.

²⁰ See Comments of Bell Atlantic Corporation (“Bell Atlantic”) at 8; USTA at 4; SBC at 7-9. When a carrier has a switch that can only serve customers located in part of a rate center, the carrier should be able to obtain codes for when needed for that particular switch, even though it may have numbering resources available at other switches, since numbers elsewhere do not make it possible for the carrier to serve customers from that particular switch.

²¹ See Comments of the Association for Local Telecommunications Services (“ALTS”) at 4, 6-7; CompTel at 5; BellSouth at 8; Nextel Communications, Inc. (“Nextel”) at 3; PCIA at 6-7; SBC at 9; Sprint at 8; Winstar at 9-10.

²² As Verizon Wireless pointed out in its comments, an NPA-wide utilization threshold would make it more difficult for carriers to obtain codes in the rate centers where they are most needed — those with high volume, growth, and utilization — because low-usage, slow-growth rate centers have numbers available that bring down the NPA-wide utilization rate. See Comments of Verizon Wireless at 5; *accord* Comments of Sprint at 8. This would give carriers a disincentive to obtain codes in rural and low-growth communities. See Comments of Winstar at 9-10.

“nonsensical.”²³ Needless to say, it would be even more nonsensical and anti-consumer to determine a carrier’s eligibility for growth codes on its system-wide or nationwide utilization rate.²⁴

Pennsylvania, while agreeing that the NPA-wide utilization threshold not be used determine for eligibility for growth codes, suggested that it might be considered in determining when an overlay should be opened.²⁵ This is obviously beyond the scope of the *Further Notice*, which addresses use of a utilization threshold for determining non-pooling carriers’ access to growth codes. In any event, Verizon Wireless disagrees with the Pennsylvania suggestion because opening an initial overlay requires extensive public education and technical planning, both of which are premised on a firmly established date for opening the overlay. Obviously, in the absence of a firm date for opening the overlay, there could be neither a useful public education campaign about the overlay nor a smooth technical transition process. For these reasons, the opening of an overlay clearly should not be premised on the NPA-wide number utilization passing some arbitrary threshold. Moreover, tying the opening of an overlay to NPA-

²³ Comments of State Advocates at 8. Despite the illogic of applying a utilization threshold to a carrier NPA-wide, two commenters suggested that the Commission consider doing so with respect to wireless carriers on the assumption that wireless carriers “can use the NXX codes they obtain well beyond the boundaries of the rate center, and perhaps even NPA-wide or across NPA lines.” See Comments of California at 6; see Time-Warner Telecom (“Time-Warner”) at 6. These commenters apparently misunderstand why wireless carriers need numbers from specific rate centers, namely, to allow their customers to receive locally-originated calls without the caller incurring a toll charge. In other words, the customer can give out a “local” number for family or business associates to call. When a wireline subscriber calls a mobile subscriber, the rate center of the mobile number is used to determine whether the call is charged as a local or toll call. Given that land-to-mobile calls are rated by the wireline telephone carrier in the same way calls to wireline customers are rated, wireless carriers need codes in specific rate centers just as wireline carriers do.

²⁴ See, e.g., Comments of PCIA at 7.

²⁵ See Comments of the Pennsylvania Public Utility Commission at 4-6.

wide utilization would result in some carriers being denied access to needed codes available only from the overlay if it were to remain unavailable because of other carriers' lower utilization.

C. There Is No Justification for Threshold Ranges Subject to State Discretion

The Commission's alternative proposal suggestion that instead of a single, nationwide utilization threshold there might be a range of thresholds, from which state regulators might select according to their discretion drew no support except from a handful of states.²⁶

Significantly, however, the states did not all agree on this — several states supported establishment of a single, uniformly applied utilization threshold.²⁷ Commenters other than the states who addressed the issue strongly opposed the establishment of a range of thresholds subject to state discretion and advocated a single, national utilization threshold.²⁸

There is clearly no record basis for adopting a range of thresholds. None of the states suggesting specific ranges provided any factual basis for their recommendations. Indeed, none

²⁶ Only California, New Hampshire, Missouri, and Florida advocated a range of thresholds subject to state discretion. *See* Comments of California at 2-3; New Hampshire at 6; Missouri Public Service Commission ("Missouri") at 2-3; Petition for Reconsideration and Comments of Florida Public Service Commission ("Florida") at 7. Of those, only California and New Hampshire proposed specific ranges (70-80%). In addition, Pennsylvania supported a fixed threshold of 75%, but asked that states have the discretion to vary it. *See* Comments of Pennsylvania at 3.

²⁷ New York states that it has found a 75% utilization threshold appropriate. *See* Comments of New York at 2. Maine advocated a 75% threshold (increasing to 85%). *See* Comments of Maine at 4. Oregon said it supported a "national policy regarding number resource optimization." *See* Comments of Oregon Public Utility Commission ("Oregon") at 3. In addition, Pennsylvania advocated a single 75% threshold, albeit subject to adjustment by the state, and California suggested a single 75% threshold as an alternative to the range that was its primary proposal. *See* Comments of Pennsylvania at 3; California at 3-4.

²⁸ *See, e.g.,* Comments of AT&T at 7-8; Bell Atlantic at 8; BellSouth at 7; CompTel at 5-6; PCIA at 12; SBC at 11-12; VoiceStream at 13; Winstar at 10; WorldCom at 3; *see generally* CTIA at 9-12.

of the states are currently utilizing a range of thresholds, so they have no experience on which to base the recommendation that a range be employed.

Equally important, there is no basis on which to grant the states the discretion to vary the utilization threshold. The Commission has not proposed, and the states have not suggested, any standards to guide their exercise of discretion. In short, a few states have sought the unbridled discretion to set the utilization threshold for a given carrier in a given area as they wish, for any reason. Without standards adopted through notice and comment rulemaking, the exercise of this discretion would be arbitrary and essentially unreviewable. The Commission clearly cannot delegate to the states the discretion to act without standards, given that Congress specifically granted the Commission “exclusive jurisdiction” over numbering, in the interest of uniform national administration.²⁹ Congress did not delegate unfettered discretion to the Commission; the Commission’s authority is subject to the overall purposes of the Communications Act³⁰ and the procedural protections of the Act and other federal administrative and judicial review laws. Congress did not delegate to the Commission, and the Commission may not subdelegate to the states, authority that is free from limitations or standards. That would be an unconstitutional abdication of legislative authority, under the nondelegation doctrine.³¹

In addition, uniformity is needed because wireless service in particular is organized and provided on an interstate basis. Companies such as Verizon Wireless provide service that crosses state boundaries and covers much of the nation. To do this efficiently, such companies

²⁹ 47 U.S.C. § 251(e)(1).

³⁰ See 47 U.S.C. § 1.

³¹ See *Touby v. United States*, 500 U.S. 160, 165 (1991); *Mistretta v. United States*, 488 U.S. 361, 371(1989); *NBC v. United States*, 319 U.S. 190, 225-26 (1943).

have centralized national or regional operational management and support systems.³² Congress recognized the national and regional characteristics of the wireless industry in Section 332 of the Communications Act,³³ which ensures that wireless carriers are not subjected to many forms of state regulation. Access to growth codes should be governed by consistent national policies, not by policies varying from state to state.³⁴ The states advocating ranges subject to state discretion have shown no special local factual circumstances that warrant their preferred approach. A national carrier obtaining codes from the North American Numbering Plan Administrator should be able to count on the same rules for decision and issuance of the codes whether it needs codes in California, Maine, or Georgia. Giving the states the authority to determine the utilization level needed by an interstate company to obtain the numbers needed to serve customers would lead to unpredictable results and place burdens on interstate commerce.³⁵

In any event, there is no need for the Commission to delegate authority to the states, because the establishment of a reasonable safety valve procedure, administered by NANPA, will ensure that carriers have access to codes based on their special conditions.

**D. There Is Consensus that the Commission's New
"Utilization" Formula Needs to Be Revised**

As the *Further Notice* acknowledges, the Commission has adopted a new formula for determining a carrier's "utilization" rate that differs sharply from the way utilization has been calculated in the telecommunications industry. Instead of determining the percentage of a carrier's numbering resources that are productively utilized, either by assignment to customers or

³² See, e.g., Comments of SBC at 11-12.

³³ 47 U.S.C. § 332.

³⁴ See, e.g., Comments of PCIA at 12.

³⁵ See Comments of SBC at 8-9.

by use for supporting purposes, the new formula credits the carrier only for numbers actually assigned to the carrier's own end-user customers. This excludes numbers used for legitimate and necessary purposes that would have been included under the traditional formula, namely, aging, administrative, reserved, and intermediate numbers. While the new formula may measure something, it does *not* measure a carrier's true utilization rate, and it is incorrect to call it that.

There is *no* support in the comments for the Commission's new method of calculating utilization. All of the commenters who addressed the issue agreed that by omitting essential categories of numbers *that are not available for assignment by the carrier*, the Commission's formula significantly understates the percentage of numbers that *are* being utilized and therefore unavailable for assignment by the carrier.³⁶ There is agreement that intermediate, aging, administrative, and reserved numbers need to be either added to the numerator of the formula or taken out of the denominator, if the formula is to be used to report a carrier's utilization of numbering resources.³⁷ This is essential if the rate calculated is to be measured against a utilization threshold for obtaining growth codes.

The serious problem from this change in the formula is apparent from the comments filed. According to some commenters, the formula understates "utilization" by at least 10-15%, perhaps even more, depending on the industry segment involved.³⁸ This is only an estimate, however. The comments indicated that there is no record concerning "utilization" calculated in

³⁶ See Letter Comments of USW at 3-4; Comments of ALTS at 3-6; AT&T at 4-5; CTIA at 5-6; CompTel at 5; PCIA at 9-11; SBC at 7-8; USTA at 3-4.

³⁷ See Letter Comments of USW at 3; Comments of Bell Atlantic at 7; CompTel at 5; SBC at 8 & n.23; Sprint at 4-8. In determining whether to include in the numerator or exclude from the denominator, the Commission should consider whether these categories should be treated in the same way as numbers assigned to the carrier's own end users or whether they are more properly treated as not being part of the inventory of numbers are under the carrier's control.

³⁸ See Comments of AT&T at 4 (10-15%); SBC at 8 (15% or more).

this way.³⁹ The effect of this deficiency is significant: Several states advocated particular utilization thresholds based on their experience applying those thresholds, but *the utilization thresholds they advocate are calculated according to the traditional industry formula, not the Commission's new formula*. The Commission cannot base a “utilization” threshold using the new definition on state suggestions of where the threshold should be set, based on state experience under a very different formula. At a minimum, the states’ suggestions are too high by 10-15% or more, due to their inclusion of numbers that would be excluded by the new formula. Many commenters indicated the need to reduce the threshold measurably if the FCC’s new formula is used.⁴⁰

Some commenters pointed out, correctly, that the new formula is also discriminatory and arbitrary, in that it penalizes categories of carriers with a substantial number of numbers in the excluded categories.⁴¹ Carriers with significant proportions of these categories of numbers will have fewer numbers available for assignment than their “utilization rate” would suggest, and may consequently be unable to meet the utilization threshold. Given that numbers must be placed in these categories in order to provide service to subscribers and that carriers cannot assign the numbers from these categories to their own subscribers, these categories are just as appropriate as the “assigned” category for determining utilization. Indeed, many of the numbers in these categories are there to comply with governmental policies that apply to specific types of carriers. For example, in the case of CMRS carriers, the carriers typically assign numbering resources to the “administrative” category to facilitate roaming service (*i.e.*, temporary local

³⁹ See Comments of BellSouth at 4; Worldcom at 2-3.

⁴⁰ See, *e.g.*, Comments of PCIA at 11; SBC at 8, 9-11; Sprint at 5; USTA at 3-4; Winstar at 8.

⁴¹ See, *e.g.*, Comments of VoiceStream at 6-9; Winstar at 7.

directory numbers assigned to roaming phones for the duration of a call) and E911 location services (ESRD/ESRK), to the “intermediate” category to accommodate resellers and their customers, pursuant to the Commission’s long-standing mandatory CMRS resale policy, and to the “aging” category due to customer attrition.⁴²

If the Commission does not revise its formula to compare “apples” with “apples,” it would be necessary to set the utilization threshold lower than the Commission had contemplated.⁴³ Using the Commission’s formula to determine compliance with the threshold levels in the *Further Notice* would penalize the customers of carriers who serve roamers, provide wireless E911, have resellers, or have aging numbers due to attrition, because they will eventually not be able to obtain numbers, even when the need for numbers is plain.

II. A TRANSITION PERIOD IS NECESSARY BETWEEN CMRS CARRIERS BECOMING LNP-CAPABLE AND BEGINNING PARTICIPATION IN POOLING

Numerous commenters support a transition period of six to twelve months, or more, after CMRS carriers become LNP-capable and their participating in pooling.⁴⁴ They showed that, among other things, before major network or service changes are rolled out, there is a need for adequate testing.⁴⁵ The implementation of LNP capability in November 2002 presents significant challenges above and beyond the technical issues relating to separating the MIN

⁴² See, e.g., Comments of AT&T at 3-4; VoiceStream at 9-10.

⁴³ See comments cited in note 40, *supra*; see also Comments of Bell Atlantic at 7.

⁴⁴ See Comments of AT&T at 9, Nextel at 5, Sprint at 10 (six months); VoiceStream at 13, 15-16 (eight months, followed by phased-in implementation); Bell Atlantic at 9, SBC at 13 (nine months); BellSouth at 9, Letter Comments of USW at 5 (12 months). CTIA urged the Commission to delay CMRS pooling until it has an opportunity to weigh the costs against the benefits, but in any event suggests that there be at least a 12 month implementation period, no less than the period afforded wireline carriers. See Comments of CTIA at 13-16; *accord* Comments of PCIA at 14-15 (no less than wireline implementation period).

⁴⁵ See, e.g., Letter Comments of USW at 5.

(mobile identification number) from the MDN (mobile directory number), which will be necessary to preserve seamless roaming.⁴⁶ Carriers will also need to modify systems network-wide, develop intercarrier communications networks, and deploy operational support systems. In the course of this, carriers will need to perform extensive testing and then isolate, identify, and remediate any problems that occur.⁴⁷

Implementing LNP and number pooling at the same time would be highly disruptive. First, it will require a major diversion of resources, in that the personnel who must deal with LNP implementation will have to do double duty and also work on pooling.⁴⁸ Second, if both programs are implemented at the same time, it will be much more difficult to troubleshoot. Problems are sure to occur, but it will be difficult to identify whether a given problem is due to LNP or pooling, and an attempt at remediation may cause problems in the other newly-instituted program. To perform implementation and testing of major changes, it is essential that they be done separately, not at the same time.⁴⁹ Doing both LNP and pooling in November 2002 poses a risk of disruption of service to customers that is both unnecessary and avoidable.

Doing pooling at the same time as LNP implementation also poses danger to nationwide seamless roaming.⁵⁰ Roaming is complex because the host carrier must validate the roamer's number and bill through the roamer's home carrier. This requires the home carrier to match up the call records accurately with its customer records. The introduction of number portability makes this more complex, because a given number may have been ported or reassigned. Adding

⁴⁶ See, e.g., Comments of AT&T at 8; BellSouth at 10-11; SBC at 13.

⁴⁷ See generally Comments of AT&T at 9-10; Nextel at 5-6; Sprint at 11-12; Letter Comments of USW at 5-6.

⁴⁸ See Letter Comments of USW at 6.

⁴⁹ See Comments of Sprint at 12.

⁵⁰ See *id.*

to this the complexity of dealing with pooled numbers *at the same time* virtually insures that incorrect or delayed bills for roaming service will result.

In addition, wireline carriers have not been required to accomplish LNP and pooling at the same time. Instead, they were first subjected to LNP in stages, and are only now being subjected to pooling, and even that is being phased in.⁵¹ Wireless carriers do not have the ability to phase in LNP capability market by market; because of the changes to roaming systems that LNP will require, the industry will have to cut over to LNP capability all at once. Doing the shift to pooling at the same time subjects wireless carriers to much more accelerated schedule for pooling, and much greater complexity, than is the case for the nation's wireline carriers. LNP "bugs" are still being worked out in the wireline environment, even after the last of the roll-out occurred 18 months ago. In the wireless arena, it is necessary to get LNP working properly before adding more layers of complexity. It would clearly be an arbitrary and unwarranted reversal of policy for the FCC to switch to a "flash cut" rule for wireless when it did not have such a rule for wireline carriers.

Some of the state commenters oppose a reasonable CMRS implementation period by citing utilization statistics to argue that wireless carriers are not using numbering resources efficiently, in an effort to show why wireless carriers should be required to pool sooner rather than later. For example, California selectively cites the statistic (from its own report on the 310 NPA) that "[w]ireless carriers hold approximately 466,000 unused numbers in the 310 NPA" to argue that hundreds of thousands-blocks "would be available for pooling today in the 310 NPA if

⁵¹ See Comments of CTIA at 15-17; PCIA at 14-15; Sprint at 10-12; VoiceStream at 15-16; Letter Comments of USW at 5.

covered CMRS providers were technically capable of pooling.”⁵² California omits highly relevant facts from that report that undermine its argument, however:

- First, the wireless carriers’ NPA-wide utilization rates were much higher than those of the wireline carriers. Wireless carriers in that NPA overall had a utilization rate of 75%, while the wireline carriers were far lower, at 60%.⁵³
- Second, wireline carriers had many times more numbers available for assignment in the NPA than the wireless carriers, not even counting the numbers set aside for pooling — the wireline carriers had about 2,189,000 numbers available for assignment versus the 466,000 held by wireless carriers.⁵⁴
- Third, California’s conclusion that hundreds of thousands of numbers could be contributed to pools by wireless carriers presumes that most of these numbers are held by “covered CMRS” carriers, who will eventually be subject to LNP and pooling. However, a significant number of the wireless code holders in the 310 study are paging and messaging companies, who are exempt from LNP and pooling.⁵⁵ There is no indication of the proportion of numbering resources held by covered and non-covered CMRS carriers, or of their respective utilization rates.
- Fourth, making the wireless carriers’ unused numbers available for pooling (assuming *arguendo* that they are held by covered CMRS carriers) would be pointless, because the wireless carriers drew the majority of their numbers from just one rate center (Compton Gardena) out of the sixteen in the NPA,⁵⁶ and about three-quarters of the wireless carriers’ numbers that were available for assignment came from that single rate center.⁵⁷ Those numbers would not become available for pooling in any other rate center.
- Fifth, the wireline carriers have relatively few subscribers in the Compton Gardena rate center and a large proportion of available numbers there,⁵⁸ and the quantity of wireless numbers available for assignment exceeds not only the quantity of wireline numbers available for assignment, but also the quantity of

⁵² Comments of California at 8-9, citing *Report on the 310 Area Code*, R.95-04-043/I.95-04-044 (Cal. P.U.C. Mar. 16, 2000), at 31.

⁵³ See *Report on the 310 Area Code* at Appendix B, Table B-1.

⁵⁴ See *id.*

⁵⁵ See *id.* at Appendix A, Table A-1.

⁵⁶ See *id.* at Appendix D, Table D-1, second page.

⁵⁷ See *id.* at Appendix B, Figure B-6b.

⁵⁸ See *id.* at Appendix B, Figure B-6a.

wireline numbers *assigned*.⁵⁹ The wireline carriers do not need access to a pool of wireless numbers there. As a result, making the wireless numbers available for pooling in that rate center is completely pointless.⁶⁰

- Sixth, the statistics cited by California are not only NPA-wide, they are industry-wide. Because they do not address the specifics of particular carriers' numbering resources in particular rate centers, any conclusions drawn from them are misleading at best. If, for example, one or more wireless carriers had recently obtained initial or growth codes that were not yet populated with customers, that would make it appear, incorrectly, in the California analysis that there were a large quantity of uncontaminated numbers that could be pooled.

Pennsylvania, like California, cites the quantity of CMRS numbers that are “unused” and could be subjected to pooling — in this case, allegedly 4.1 million statewide.⁶¹ Its conclusion is equally incorrect:

- First, Pennsylvania does not just cite numbers that are NPA-wide, it cites statewide figures, spanning twelve NPAs.⁶² Obviously, CMRS numbers that are available in Gettysburg, State College, or small rural towns cannot be contributed to a pool in Scranton, Pittsburgh, or Philadelphia, much less to pools in specific rate centers where numbers happen to be needed.

⁵⁹ Compare *id.* at Appendix B, Figure B-6a with Figure B-6b.

⁶⁰ The Commission is well aware that wireless carriers typically draw numbers from only a few rate centers in an NPA, as is the case in the 310 NPA, where more than 50% of the wireless industry's codes are taken in a single rate center. Florida attempts to use the fact that in some rate centers, “CMRS carriers have more [NXX codes] than wireline carriers” to support its argument that “[i]f CMRS carriers are not required to participate in any pooling trials, pooling will be far less effective.” Comments of Florida at 7. In fact, where CMRS carriers' codes exceed those of the wirelines, as in California's Compton Gardena rate center, there is little reason to include the CMRS carriers in pooling, given that the CMRS carriers' utilization is generally higher than wireline carriers' utilization. They would make little, if any, net contribution to the pool in such cases, because with their high utilization and growth rate they would rapidly consume the very blocks they contributed; moreover, they would get little advantage out of pooling, since the wireline carriers in such rate centers have comparatively fewer blocks to contribute.

⁶¹ See Comments of Pennsylvania at 7.

⁶² See *id.* at 7, 1.

- Second, Pennsylvania emphasizes that wireless carriers statewide have an overall utilization rate of 55%⁶³ but does not say what their utilization rates are in key urban rate centers.
- Third, Pennsylvania does not reveal how wireless carriers' utilization compares with that of wireline carriers. Based on the information supplied elsewhere in its pleading, it appears that wireline carriers have a statewide utilization rate of 47% and have in excess of 21,000,000 numbers available for assignment, more than five times the number wireless carriers have.⁶⁴
- Fourth, like California, Pennsylvania lumps paging carriers, who are exempt from LNP and pooling, together with covered CMRS in discussing the wireless carriers' use of numbering resources. As a result, it grossly overstates the number numbers that might be made available for pooling.⁶⁵

It is readily apparent that the quantity of numbers available for assignment within the entire CMRS industry throughout an NPA or a state, or an industry-wide utilization rate covering such a region, has no relevance whatsoever to the efficiency with which numbering resources are used by a given carrier in a given rate center. Only the latter figure — which the states fail to discuss — would indicate how many numbers a carrier could contribute to a particular number pool.

Finally, the Joint State Advocates' suggestion that CMRS carriers be subjected to an interim requirement that they take numbers on a pooled basis, even though they cannot donate to the pool,⁶⁶ should be rejected. It is clearly beyond the scope of the *Further Notice*. The Commission has neither proposed nor sought comment on the imposition of a pooling

⁶³ See *id.* at 7.

⁶⁴ See *id.* at 3 (statewide utilization rate for all carriers is 49%), 7 (CMRS carriers hold 914 of 5031 NXX codes statewide).

⁶⁵ See *id.* at 7.

⁶⁶ See Comments of State Advocates at 14. The State Advocates also urge the Commission to consider another proposal concerning how numbers are assigned. See *id.* at 14 n.36. That proposal has been accepted as an issue for consideration by the Industry Numbering Committee, but has not yet been presented or addressed. It is simply not known at this point what the

(continued on next page)

requirement for CMRS prior to November 24, 2002, on an interim basis or otherwise. Nor should it. The only issue is whether there should be a delay *after* that date.

III. THE FCC SHOULD NOT PURSUE THE SALE OF NUMBERS

The comments reflect uniform agreement that the sale of numbers would be misguided and unlawful.⁶⁷ Even if it were lawful and a good idea, which it is not, there are huge practical issues that would need to be resolved — “daunting difficulties in implementation.”⁶⁸ For example, commenters pointed out that payment (to whom?) for numbers raises ownership issues concerning an asset that has traditionally not been viewed as ownable property.⁶⁹ This, in turn, raises questions whether a carrier will be entitled to just compensation if and when numbers it has paid for are taken away through reclamation for non-use or as a result of customer porting.⁷⁰ And the comments point out that the Commission’s plan to auction off resources that are in diminishing supply under today’s administrative regime may result in making those numbers even more scarce.⁷¹ It may also discriminate against some carriers, such as those providing services with low average per-unit revenue, new entrants, and small companies.⁷² Moreover,

(footnote continued)

advantages, disadvantages, costs, and workability of the proposal are. Accordingly, it would be premature for the Commission to consider it.

⁶⁷ See Comments of ALTS at 8-9; AT&T at 10-13; Bell Atlantic at 9-11; BellSouth at 12-17; CompTel at 6-8; Cox at 5-8; GTE at 11-13; MediaOne at 7-9; Midvale Telephone Exchange *et al.* (“Midvale”) at 2-10; PCIA at 15-22; RCN Telecom Services, Inc. (“RCN”) at 2-4; Rural Independent Competitive Alliance (“RICA”) at 1-8; SBC at 14-18; VoiceStream at 16-19; Worldcom at 5-19; 2nd Century Communications, Inc. (“2nd Century”) at 1-6.

⁶⁸ Comments of Worldcom at 5; *see* Comments of Bell Atlantic at 10-11; BellSouth at 16; Missouri at 4-5; SBC at 15-18; VoiceStream at 17-18.

⁶⁹ See Comments of BellSouth at 14; Midvale at 9; PCIA at 17, 19-20; 2nd Century at 3.

⁷⁰ See Comments of BellSouth at 16; Midvale at 9; Worldcom at 7.

⁷¹ See Comments of PCIA at 19; VoiceStream at 17; 2nd Century at 3.

⁷² See, e.g., Comments of ALTS at 8; BellSouth at 14; Cox at 6-7; Midvale at 3-4; Nextel at 6-7; RICA at 1-3, 6-7; PCIA at 21-22; Worldcom at 7, 9-13; 2nd Century at 2-3, 6.

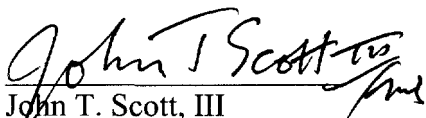
charging for numbers will clearly not benefit the public, who will ultimately bear the cost. The rulemaking record, in short, supplies no factual or legal ground to charge for numbers or auction them — and in fact supplies compelling grounds not to impose such rules.

CONCLUSION

For the foregoing reasons, Verizon Wireless urges the Commission to revise its proposed rules and policies concerning utilization thresholds and rates as set forth herein, to establish a reasonable transition period for CMRS implementation of number pooling, and to reject the sale or auction of numbering resources.

Respectfully submitted,

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June 9, 2000

CERTIFICATE OF SERVICE

I, Jo-Ann Monroe, hereby certify that on this 9th day of June 2000, copies of the foregoing "Reply Comments in Response to Further Notice," in CC Docket No. 99-200 were served by hand on the following:

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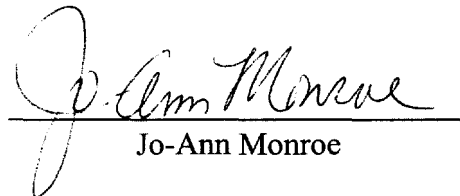
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